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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in Bosnia and Herzegovina

Report of the Secretary-General

Introduction

1. At its fiftieth session the Commission on Human Rights adopted resolution 1994/75 of 9 March 1994, entitled "Situation of human rights in Bosnia and Herzegovina", in which it strongly condemned the policy of genocide and "ethnic cleansing" and the range of military and other attacks perpetrated especially against civilians, and categorically condemned all violations of human rights and international humanitarian law in Bosnia and Herzegovina. In the same resolution, the Commission demanded firm and resolute action by all concerned to put an end to all human rights violations and that the authorities of Serbia and Montenegro cease their interference in and support to the self-proclaimed Serb entity in pursuing aggressively acts which flagrantly violate international law and human rights; strongly urged the authorities of Croatia and Bosnia and Herzegovina to do their utmost in improving relations between Bosnian Croats and Bosnian Muslims; reaffirmed the right of all refugees and displaced persons to return to their homes and urged

the international community to assist in reversing the consequences of forced transfers of property and other acts made under duress; urged the relevant international organizations and bodies to make determined efforts towards the resolution of cases of missing persons; urged all States, relevant international organizations and bodies and all parties to the conflict to cooperate fully with the Commission of Experts and the International Tribunal; called for the early establishment of a just and lasting peace by, inter alia,

effective and immediate implementation of the relevant resolutions; commended the Special Rapporteur for his activities and called on parties to facilitate field missions by his office. Finally, it requested the Secretary-General to report to the Commission at its fifty-first session on the implementation of the resolution.

I. ACTION TAKEN BY THE HIGH COMMISSIONER FOR HUMAN RIGHTS

2. The High Commissioner for Human Rights, since his appointment, has developed a close working relationship with the Special Rapporteur of the Commission on the situation of human rights in the territory of the former Yugoslavia, whose mandate is served by a field operation of the Centre for Human Rights.

3. The High Commissioner has recognized that the cease-fire and cessation of hostility agreements of December 1994, together with the establishment of the Federation of Bosnia and Herzegovina, present new possibilities for human rights monitoring and the rebuilding of civic institutions in the country. In order urgently to address these matters and to investigate how greater order and complementarity might be introduced for the many human rights-related activities of the various United Nations bodies active in Bosnia and Herzegovina, he has invited the heads of the principal bodies to meet with him in Geneva in early February.

II. ACTION TAKEN BY THE SPECIAL RAPPORTEUR

4. Since the renewal of his mandate in accordance with Commission on Human Rights resolution 1994/72 of 9 March 1994, the Special Rapporteur has submitted five reports (E/CN.4/1995/4, E/CN.4/1995/10, E/CN.4/1995/54, E/CN.4/1995/57, A/49/641-S/1994/1252). Each of these reports describes the human rights situation in areas of his mandate including Bosnia and Herzegovina and contains a number of recommendations for action by the international community and various parties in the region.

5. With regard to areas under the control of the de facto Bosnian Serb authorities, the Special Rapporteur drew attention to the ongoing practice of "ethnic cleansing" and the widespread violation of the human rights of peoples living in these areas, including Bosnian Serbs who were perceived as disloyal by the de facto authorities. There has also been a continuation of military attacks on civilians and interference with the delivery of humanitarian aid by Bosnian Serb forces in areas throughout Bosnia and Herzegovina. The Special Rapporteur vigorously condemned all such violations of human rights and called for the prosecution of the perpetrators by the International Tribunal.

6. The Special Rapporteur has also drawn attention to the positive implications for protection of human rights of the cessation of hostilities between the Government and the Bosnian Croats and the establishment of the Federation of Bosnia and Herzegovina. He has, however, noted that violations of human rights persist in the Federation area, primarily but not exclusively in areas under the effective control of Bosnian Croat local authorities. He has further drawn attention to the unwillingness of all sides to take the necessary initiatives to facilitate the return to their homes of displaced people. As well as condemning all violations of human rights and calling for prosecution of offenders by the International Tribunal, the Special Rapporteur has called for reconciliation and for a willingness by each of the parties to be the first to propose initiatives intended to redress effects of the recent confrontation.

7. The reports of the Special Rapporteur described and forthrightly condemned the violations of human rights and international humanitarian law committed in the Bihac region by forces of the so-called "Autonomous Province of Western Bosnia" and the forces of the so-called "Republic of Serbian Krajina".

8. The Special Rapporteur commended the international community for actions undertaken on its behalf in Bosnia and Herzegovina, such as the ongoing work of UNHCR and UNPROFOR, as well as the reconstruction initiative in Sarajevo and the European Union administration in Mostar. The Special Rapporteur has, however, called for more vigorous international action in supporting the humanitarian aid programme and in protecting the areas designated by the Security Council as "safe areas". He has also insisted that all initiatives intended to promote any peace settlements fully acknowledge the primary need to respect human rights and to redress the effects of violations of human rights.

9. The activities of the field operation of the Centre for Human Rights servicing the mandate of the Special Rapporteur are described in the various reports and in particular in E/CN.4/1995/57, in which attention is drawn to the operation's funding difficulties.

III. SITUATION CONCERNING VOLUNTARY RETURN OF DISPLACED PERSONS

10. The situation in Bosnia and Herzegovina, even in the area of the Federation, is such that repatriation of displaced persons and refugees has not occurred to any significant extent. Conditions are such that UNHCR is still not in a position to promote voluntary return or repatriation and few people are approaching them for assistance to or on return. UNHCR is, however, continuing its planning for an eventual programme of voluntary return and repatriation.

IV. PROBLEM OF DISAPPEARANCES

11. The problem of disappearances has continued to engage the attention of the Special Rapporteur and the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights. Following a study conducted by one of the members of the Working Group (E/CN.4/1994/26/Add.1) and his recommendation for the establishment of a special process to address the issue

of disappearances in the former Yugoslavia, the Commission, in resolution 1994/72, requested the Working Group, represented by one of its members, to cooperate as appropriate with the Special Rapporteur in dealing with the matter. The Working Group designated Mr. Manfred Nowak to undertake this task.

12. In order to implement the resolution in an efficient manner and taking into account the humanitarian and non-accusatory nature of the practices of the Working Group, it was agreed that the designated member would hold meetings with the relatives of missing persons, as well as with all governmental, intergovernmental and non-governmental organizations concerned. The role of the Special Rapporteur has so far been limited to providing material and logistical support through the activities of the field staff servicing his mandate.

13. The designated member has visited Croatia and Bosnia and Herzegovina where he met with the interlocutors noted above. He has, however, been refused permission by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to visit that country. The designated member deeply regrets this negative attitude on the part of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and draws attention to the resolutions of the Commission on Human Rights (1994/72) and the General Assembly (49/196) which call on that Government to cooperate with him.

14. In Bosnia and Herzegovina the wave of disappearances which began soon after the initiation of the armed conflict in the spring of 1992 has continued with varied degrees of intensity and it is impossible to ascertain the total number of disappeared persons. The instability created by the conflict makes it all the more difficult for relatives to submit their reports on missing persons and to establish a channel of communication with the relevant authorities. In relation to this situation, the activities of the designated member, in cooperation with ICRC, may be instrumental in bringing about a solution to the problem. The activities of the designated member are described in his report to the Commission (E/CN.4/1995/37).

V. ACTION TAKEN BY THE COMMISSION OF EXPERTS ESTABLISHED PURSUANT TO SECURITY COUNCIL RESOLUTION 780 (1992)

15. The Commission of Experts established pursuant to Security Council resolution 780 (1992) concluded its work by 30 April 1994 in accordance with a decision taken under the terms of Security Council resolution 827 (1993) and issued its final report (S/1994/674). The report outlines the Commission's mandate and structure of work, analyses the law applicable to its investigations and presents substantive findings. The findings of the Commission relate to the following matters: alleged genocide and massive human rights violations in the Prijedor opstina; the battle and siege of Sarajevo; incidents in the Medak pocket; detention facilities; rape and other forms of sexual assault; mass graves; destruction of cultural property; incidents at Dubrovnik; a radiological investigation.

16. The Commission concluded that the level of victimization in the conflict has been particularly high and found evidence of and information concerning grave breaches of the Geneva Conventions of August 1949 and other provisions of international humanitarian law. It observed that practices of "ethnic cleansing", sexual assault and rape appear to represent the implementation of policy by some parties and that it is possible to impute criminal responsibility in these matters.

17. The Commission further addressed the status of arguments which would deny criminal responsibility, such as the legal defence of "superior orders", the loose nature of structures of command and control, the legal consequences of failure to intervene to prevent the commission of atrocities, etc. The Commission finally insisted on the need for justice to be done with regard to the criminal acts committed in the course of the conflict.

VI. ACTION TAKEN BY THE INTERNATIONAL TRIBUNAL

18. The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia was established by the Security Council in 1993 to provide a judicial solution to the grave breaches of international humanitarian law occurring in the region. The Tribunal's 11 judges were elected by the General Assembly in September 1993 and took office on 17 November 1993. An acting registrar was appointed by the Secretary-General in January 1994.

19. During 1994 the activities of the International Tribunal were hampered by the delay in the appointment of a Prosecutor. A Prosecutor-Designate had been appointed by the Security Council on 21 October 1993; however, this person withdrew his acceptance of the post in February 1994 and new candidates had to be identified. Only in July was the Security Council in a position to make this appointment. The work of the Tribunal, especially that of the office of the Prosecutor and the registry, has also been hampered by funding difficulties which have, in particular, hindered recruitment of staff.

20. The judges have elected a President, a Vice-President and presiding judges for each of the two trial chambers, determined the composition of the chambers and drawn up rules of procedure and evidence. The Prosecutor's office has also taken shape and analysis is now under way of materials made available to it, especially as provided by the Commission of Experts. Indictments and the trial process will follow this process of analysis and the carrying out of other investigatory procedures. The registry of the Tribunal, as well as carrying out tasks common to other court registries, is also charged with establishing a unit to assist victims and witnesses, the establishment of a legal aid system and administration of the detention unit.

VII. ACTION TAKEN BY THE INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA

21. The International Conference on the Former Yugoslavia (ICFY) has continued its work. It participates in the Contact Group which has been established with a view to facilitating further negotiations between the parties to the conflict towards bringing about a comprehensive settlement.

The secretariat of the Contact Group also includes a legal adviser from ICFY. The Contact Group drew up a map for the allocation of territory between the Federation and the Bosnian Serb de facto authorities and submitted it to the two sides on 6 July 1994. The map which allocated 51 per cent of the territory to the Federation and 49 per cent to the Bosnian Serb de facto authorities, was initially rejected by the Bosnian Serb de facto authorities. The Co-Chairmen of the Steering Committee of ICFY have actively supported the efforts of the Contact Group to bring about acceptance of its map by the Bosnian Serb de facto authorities. The Co-Chairmen have encouraged action by the Federal Republic of Yugoslavia (Serbia and Montenegro) to persuade the Bosnian Serb de facto authorities to accept the Contact Group's proposals and especially the initiative to close the border between the areas under Bosnian Serb de facto control and the Federal Republic of Yugoslavia (Serbia and Montenegro).

22. The Co-Chairmen continue to work closely with the Contact Group and with certain other Governments and leaders whose influence could help the Bosnian parties to terminate the conflict and achieve a negotiated political settlement. In this regard, the Co-Chairmen have attended meetings of the Security Council and the European Foreign Affairs Council. They also keep in close touch with UNPROFOR and with the Special Representative of the Secretary-General for the former Yugoslavia.

VIII. ACTION TAKEN BY THE UNITED NATIONS PROTECTION FORCE (UNPROFOR)

23. UNPROFOR continues to be a significant factor in facilitating the improvement of the population's living conditions through, for example, its promotion of local cease-fires, its negotiation and implementation of agreements on a variety of issues ranging from the release of prisoners to the repair and improvement of public services, and its assistance in the evacuation of the wounded and sick. UNPROFOR has also been closely involved in implementation of military aspects of the Washington Agreement of 10 May 1994, bringing a large degree of peace and stability to central Bosnia and western Herzegovina. Related activities include crucial roles in the demilitarization of Mostar and in the efforts to re-establish freedom of movement in various parts of the Federation area.

24. UNPROFOR persists in creating conditions for and participating in the delivery of humanitarian aid. In this endeavour, as in its other activities, UNPROFOR personnel have been subject to risk and attack and have suffered casualties. UNPROFOR personnel have been especially exposed in their activities in areas declared by the Security Council as "safe areas" and their environs, such as Sarajevo, Gorazde and Bihac.

25. UNPROFOR has continued to highlight and strongly condemn violations of human rights. It continues its efforts to ensure that the treatment of minorities in areas held by Bosnian Serb de facto authorities fully complies with international norms and standards.